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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 22 2014

W. Brown

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 RIVERSIDE COUNTY- HISTORIC COURTHOUSE

10 CYNTHIA GRAHAM, an individual,
11

12 Plaintiff

13 v.

14 RANCHO FORD, INC., a California
corporation;
15 FORD MOTOR COMPANY, a Delaware
corporation;
16 FORD MOTOR CREDIT COMPANY
17 LLC, Delaware limited liability company;
and
18 DOES 1 through 75,

19 Defendants.
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Case No.: **RIC 1412556**

COMPLAINT FOR:

1. BREACH OF EXPRESS WARRANTY;
2. BREACH OF IMPLIED WARRANTY;
3. RESCISSION OF WRITTEN CONTRACT;
4. INTENTIONAL MISREPRESENTATION;
5. NEGLIGENT MISREPRESENTATION;
6. SELLING AUTOMOBILE FOR MORE THAN ADVERTISED PRICE;
7. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT; AND
8. UNFAIR COMPETITION (BUS. & PROF. CODE SECTION 17200).

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SUMMARY

1. This lawsuit arises out of Plaintiff Cynthia Graham's purchase of a certified pre-owned Ford Fiesta from Defendant Rancho Ford, Inc. (hereafter "Rancho Ford").

2. On at least six occasions while it was under Defendant Ford Motor Company's express warranty, Plaintiff took the Ford Fiesta in for repair of a serious defect that causes the vehicle to fail to start, results in a dangerous inability to accelerate, inhibits gear shifting, and which causes the check-engine light to illuminate. However, Ford Motor Company's authorized repair facilities were either unable or unwilling to properly diagnose and repair the problem. Accordingly, under California's Song-Beverly Consumer Warranty Act (Civ. Code § 1790 *et seq.*) (hereafter the "lemon law"), Plaintiff is entitled to have her vehicle repurchased by Ford Motor Company. Plaintiff is also entitled to a civil penalty of twice her actual damages because of Ford Motor Company's willful refusal to comply with its obligations under the California lemon law.

3. Rancho Ford sold the Ford Fiesta to Plaintiff for more than the price at which it was currently advertising the vehicle, and failed to disclose to Plaintiff that the Ford Fiesta was previously registered as a rental vehicle. This conduct amounts to common law fraud and violated the Consumers Legal Remedies Act (Civ. Code 1750 *et seq.*) (the "CLRA"), Vehicle Code section 11713.1(e), 13 California Code of Regulations section 260.04(b), and the Unfair Competition Law (Bus. & Prof. Code 17200 *et seq.*) (the "UCL"). Based on these violations of California law, Plaintiff is entitled to rescission of the contract and/or compensatory and punitive damages.

4. Finally, Rancho Ford failed to correctly itemize the amount of Plaintiff's cash down payment and her agreed-upon deferred down payment in the Ford Fiesta's purchase contract. This amounts to a violation of the mandatory financial disclosure obligations

1 applicable to motor vehicle sales contracts. As a result, Plaintiff is entitled to rescind the Ford
2 Fiesta's purchase contract and restitution of the amounts that she paid towards that contract.

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4 5. Plaintiff is also entitled to an injunction prohibiting Rancho Ford from
5 committing the above-listed illegal acts and practices, as well as her attorney's fees, costs, and
6 litigation-related expense.

7 PARTIES

8 6. Plaintiff is an individual who resides in Canyon Lake, California.

9 7. Defendant Rancho Ford, Inc. is a California corporation that does business as a
10 car dealership at 26895 Ynez Road, Temecula, California.

11 8. Defendant Ford Motor Company is a Delaware corporation that does business
12 throughout the state of California, including Riverside County.

13 9. Defendant Ford Motor Credit Company LLC is a Delaware limited liability
14 company that does business in Riverside County and throughout California. Ford Motor
15 Credit Company LLC is the lender to which Rancho Ford assigned the Ford Fiesta's purchase
16 contract. Accordingly, as the holder of the purchase contract it is liable for all of the causes of
17 action and defenses that Plaintiff herein asserts against Rancho Ford.

18 19 10. Plaintiff does not know the true names and capacities, whether corporate,
20 partnership, associate, individual or otherwise of Defendants sued herein as Does 1 through
21 10, inclusive, under the provisions of section 474 of the California Code of Civil Procedure.
22 Defendants Does 1 through 75, inclusive, are in some manner responsible for the acts,
23 occurrences and transactions set forth herein, and are legally liable to Plaintiff. Plaintiff will
24 seek leave to amend this Complaint to set forth the true names and capacities of the fictitiously
25 named Defendants together with appropriate charging allegations when ascertained.
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2 11. All acts of corporate employees as alleged were authorized or ratified by an
3 officer, director or managing agent of the corporate employer.

4 FACTS

5 12. Plaintiff alleges as follows, on information and belief, formed after an inquiry
6 reasonable under the circumstances:

7 13. On or about June 15, 2013, Plaintiff visited Rancho Ford shopping for a vehicle.
8 Rancho Ford showed Plaintiff that certain used 2011 Ford Fiesta with vehicle identification
9 number 3FEDP4CJ1BM196996 (the "Ford Fiesta").

10 14. Prior to June 15, 2013, Rancho Ford advertised the Ford Fiesta in various media,
11 including but not limited to its website, for a purchase price of \$16,777. Such advertisements
12 did not list an expiry date for the \$16,777 advertised price.

13 15. Plaintiff and Rancho Ford negotiated Plaintiff's purchase of the Ford Fiesta. In
14 doing so, Rancho Ford did not disclose to Plaintiff that its current advertisements stated that
15 the Ford Fiesta's asking price was \$16,777. As a result, Plaintiff agreed to pay \$17,950
16 (exclusive of fees and taxes) for the Ford Fiesta.

17 16. With regard to the down payment, Rancho Ford told Plaintiff that she could
18 purchase the Ford Fiesta and immediately take delivery of that vehicle if, in addition to the
19 agreement's other terms, she made an immediate cash down payment of \$500 and another
20 down payment of \$2,000 two weeks later. The effect of this arrangement was that Plaintiff had
21 agreed to make a \$2,000 deferred down payment towards the purchase of the Ford Fiesta.

22 17. Rancho Ford prepared a retail installment sale contract for Plaintiff to sign, and
23 told Plaintiff that it accurately memorialized their agreement for the sale and purchase of the
24 Ford Fiesta. Relying on these representations, Plaintiff signed the contract. The Ford Fiesta's
25 purchase contract states that its purchase price (exclusive of fees and taxes) is \$17,950. It also
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1 states that Plaintiff made an immediate cash down payment of \$2,500, and that she had not
2 agreed to make any deferred down payments.

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4 18. The purchase contract for the Ford Fiesta gives Rancho Ford a security interest
5 in the Ford Fiesta in order to secure Plaintiff's performance of their obligations under the
6 contract.

7 19. Plaintiff's purchase of the Ford Fiesta was accompanied by Ford Motor
8 Company's express warranty. As a result, the purchase was also accompanied by Ford Motor
9 Company's and Rancho Ford's implied warranty of merchantability.

10 20. On at least six occasions while the Ford Fiesta was under the applicable express
11 and implied warranties, Plaintiff took the Ford Fiesta back to Rancho Ford for repair of a defect
12 causes the vehicle to fail to start, results in a dangerous inability to accelerate, inhibits gear
13 shifting, and which causes the check-engine light to illuminate (hereafter the "Defect").
14

15 21. However, on all six occasions Rancho Ford was either unable or unwilling to
16 properly diagnose and repair the Defect.

17 22. After the fourth unsuccessful repair attempt (or earlier), Defendant Ford Motor
18 Company was required, under the California lemon law, to offer to either replace or
19 repurchase the Ford Fiesta. However, notwithstanding its legal obligation, Ford Motor
20 Company willfully refused to comply with the lemon law.
21

22 23. After she purchased the Ford Fiesta, Plaintiff discovered that the Ford Fiesta had
23 previously been registered as a rental vehicle. Rancho Ford knew about the Ford Fiesta's
24 rental history, but failed to disclose this fact to Plaintiff (either in its advertising of the Ford
25 Fiesta or in person) prior to Plaintiff's purchase of that vehicle. The rental history decreases
26 the fair market value of the Ford Fiesta, and Plaintiff would not have entered into the
27 transaction to purchase the Ford Fiesta had she known about the prior rental history.
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FIRST CAUSE OF ACTION

Breach of Express Warranty

(Against Defendant Ford Motor Company and Defendants 1 Through 75)

24. Plaintiff incorporates by reference the allegations in paragraphs 1 through 23.

25. Ford Motor Company is the warrantor of the Ford Fiesta's express warranty.

26. Pursuant to the Ford Fiesta's express warranty, Ford Motor Company undertook to preserve or maintain the utility or performance of the Ford Fiesta or provide compensation if there was a failure in such utility or performance.

27. The Ford Fiesta has and has had serious defects and nonconformities to warranty including, but not limited to, the Defect.

28. Under the California lemon law, the Ford Fiesta is a "consumer good" purchased primarily for family or household purposes and Plaintiff has used the vehicle primarily for those purposes.

29. Plaintiff is a "buyer" of consumer goods under the lemon law.

30. The foregoing defects and nonconformities to warranty manifested themselves within the applicable express warranty period. The nonconformities substantially impair the use, value and/or safety of the Ford Fiesta.

31. Plaintiff delivered the Ford Fiesta to authorized repair facilities of Ford Motor Company for repair of the nonconformities on numerous occasions.

32. Such authorized repair facilities were unable to conform the Ford Fiesta to the applicable express and implied warranties after a reasonable number of attempts.

33. By failure of Ford Motor Company to remedy the defects as alleged above, or to issue a refund or replacement, Ford Motor Company is in breach of its obligations under the lemon law.

1 goods are used; (3) it was adequately contained, packaged, and labeled; and (4) it conforms to
2 the promises or affirmations of fact made on the container or label.

3
4 42. The Ford Fiesta's Defect constitutes a breach of the implied warranty of
5 merchantability because the Ford Fiesta (1) would not pass without objection in the trade under
6 the contract description, (2) is not fit for the ordinary purposes for which such goods are used,
7 (3) was not adequately contained, packaged, and labeled, and (4) does not conform to the
8 promises or affirmations of fact made on the container or label.

9
10 43. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the Ford
11 Fiesta, and is entitled to rescind the Ford Fiesta's purchase contract and to restitution of all
12 money paid towards the Ford Fiesta's purchase contract.

13 44. Plaintiff has been proximately damaged by Ford Motor Company and Rancho
14 Ford's failure to comply with their obligations under the implied warranty.

15 45. Plaintiff is entitled to the remedies provided in California Civil Code section
16 1794, including their attorney's fees, costs, and expenses.

17 THIRD CAUSE OF ACTION

18 Rescission of Written Contract

19 (Against Defendants Rancho Ford, Inc., Ford Motor Credit Company LLC, and Does 1
20 Through 75)

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22 46. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
23 through 45.

24 47. The purchase contract for the Ford Fiesta a is an unlawful contract because
25 California law prescribes the form and format of automobile sale contracts in which the seller
26 retains a security interest to secure the buyer's performance of his or her obligations (hereafter
27 a "conditional sale contract").
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2 48. Under Civil Code section 2981.9, a conditional sale contract for the sale of a
3 motor vehicle must contain in a single document all of the agreements between the buyer and
4 the seller with respect to the total cost and terms of payment for the motor vehicle, including
5 any promissory notes or other evidence of indebtedness (hereafter referred to as the "Single
6 Document Rule").

7 49. The Ford Fiesta's conditional sale contract fails to comply with the Single
8 Document Rule because the amount and due date for Plaintiff's deferred down payment is not
9 stated anywhere in the contract.

10 50. Under Civil Code section 2982(a)(6), a conditional sale contract for the sale of a
11 motor vehicle must separately and specifically itemize the amount that the buyer is immediately
12 paying as a cash down payment, and the amount of any deferred down payments.

13 51. The Ford Fiesta's conditional sale contract does not comply Civil Code section
14 2982(a)(6) because it does not correctly itemize the amount of Plaintiff's actual immediate cash
15 down payment and the amount of her agreed-upon deferred down payment.

16 52. Because the Ford Fiesta's conditional sale contract fails to comply with the
17 requirements for such contracts prescribed by California law, under Civil Code section 2983
18 and 2983.1 it is an unenforceable contract and Plaintiff is entitled to rescind it. Plaintiff hereby
19 rescinds the Ford Fiesta's conditional sale contract. Accordingly, under Civil Code sections
20 2983 and 2983.1 Plaintiff is entitled to recover restitution equal to the total amounts that she
21 paid towards the Ford Fiesta's conditional sale contract, without any reduction in value caused
22 by the passage of time.
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25 53. Under Civil Code section 2983.4 Plaintiff is also entitled to her attorney's fees
26 and costs.
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FOURTH CAUSE OF ACTION

Intentional Misrepresentation

(Against Defendants Rancho Ford, Inc., Ford Motor Credit Company LLC, and Does 1
Through 75)

54. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 53.

55. At the time of purchase, and afterwards, Rancho Ford made the misrepresentations set forth above. These misrepresentations included, but are not limited to, that it was legally entitled to sell the Ford Fiesta to Plaintiff for a price of \$17,950.

56. Rancho Ford omitted from the statements it made material facts, the disclosure of which was necessary, (1) in order to make its other statements not misleading; (2) because they were known materials facts; (3) because Rancho Ford knew that it had exclusive knowledge that was not accessible to Plaintiff; (4) because it was reasonable for Plaintiff to expect disclosure of such facts; and (5) it was legally required to make such disclosures. These omissions include, but are not limited to the following: (1) that the Ford Fiesta had previously been registered as a rental vehicle; (2) that Rancho Ford was currently advertising the Ford Fiesta with an asking price of \$16,777; and (3) that Rancho Ford was not permitted by law to sell the Ford Fiesta for more than \$16,777.

57. At all times Rancho Ford either had actual or constructive notice of the true facts but nonetheless intentionally or recklessly concealed these facts from Plaintiff.

58. Rancho Ford made these representations and omitted material facts with the intent to defraud Plaintiff and to induce Plaintiff to purchase the Ford Fiesta and pay an inflated sales price. At the time Plaintiff purchased the Ford Fiesta she did not know, or have reason to know, that Rancho Ford was making false and misleading representations and had omitted material facts. Plaintiff acted in justifiable reliance upon the truth of the representations which

1 misled her as to the nature and extent of the facts concealed. Plaintiff was justified in her
2 reliance, as Rancho Ford held itself out as professionals in the automotive sales industry, and
3 Plaintiff had no reason to doubt such representations.
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5 59. As a direct and proximate result of Rancho Ford's fraudulent representations
6 and omissions of material facts, Plaintiff suffered damages, including actual, general,
7 consequential and incidental damages according to proof at trial.

8 60. Plaintiff is also entitled to punitive damages.

9 61. Rancho Ford committed fraud in the inducement of the purchase contract for
10 the Ford Fiesta, and Plaintiff is therefore entitled to rescission and restitution in an amount
11 according to proof at trial.
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13 FIFTH CAUSE OF ACTION

14 Negligent Misrepresentation

15 (Against Defendants Rancho Ford, Inc., Ford Motor Credit Company LLC, and Does 1
16 Through 75)

17 62. Plaintiff incorporates by reference the allegations in paragraphs 1 through 61.

18 63. As an alternative to Plaintiff's cause of action for intentional misrepresentation,
19 Plaintiff alleges that Rancho Ford's misrepresentations were made negligently, if not
20 intentionally.
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22 64. The representations made by Rancho Ford were not true.

23 65. Regardless of its actual belief, Rancho Ford made the representations without
24 any reasonable grounds for believing them to be true.

25 66. Rancho Ford failed to exercise due care in ascertaining the accuracy of the
26 representations made to Plaintiff.
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1 76. Rancho Ford sold the Ford Fiesta to Plaintiff for a price greater than the asking
2 in Rancho Ford's advertisements for the Ford Fiesta. Accordingly, Rancho Ford's sale of the
3 Ford Fiesta was an illegal transaction, and is an illegal and unenforceable contract.
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5 77. Plaintiff is entitled to rescind the Ford Fiesta's purchase contract because it is an
6 illegal contract, and hereby does rescind the contract. Plaintiff is entitled to restitution of all
7 amounts paid towards the Ford Fiesta, and to incidental and consequential damages.

8 78. Plaintiff is also entitled to her attorney's fees and costs.

9 SEVENTH CAUSE OF ACTION

10 Consumers Legal Remedies Act - Injunctive Relief Only

11 (Against Defendants Rancho Ford, Inc., Ford Motor Credit Company LLC, and Does 1
12 Through 75)

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14 79. Plaintiff hereby incorporates by reference the allegations in Paragraphs 1
15 through 78.

16 80. The Ford Fiesta is a "good" under the CLRA that was bought for use primarily
17 for personal, family or household purposes.

18 81. Plaintiff is a "consumer" under the CLRA.

19 82. The advertisement and the sale of the Ford Fiesta to Plaintiff are "transactions"
20 under the CLRA.

21 83. The CLRA prohibits numerous unlawful business acts, including: (i)
22 misrepresenting the source, sponsorship, approval, or certification of goods or services; (ii)
23 representing that goods or services have sponsorship, approval, characteristics, ingredients,
24 uses, benefits, or quantities which they do not have or that a person has sponsorship, approval,
25 status, affiliation, or connection which he or she does not have; (iii) representing that goods or
26 services are of a particular standard, quality, or grade, or that goods are of a particular style or
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1 model, if they are another; (iv) misrepresenting the source, sponsorship, approval, or
2 certification of goods; (v) advertising goods or services with intent not to sell them as advertised;
3 (vi) representing that a transaction confers or involves rights, remedies, or obligations which it
4 does not have or involve, or which are prohibited by law; and (vii) inserting an unconscionable
5 provision into a contract. The CLRA also prohibits the omission of statements that a person
6 has a legal duty to make.
7

8 84. Rancho Ford violated the CLRA by: (1) concealing and failing to disclose that
9 the Ford Fiesta had previously been registered as a rental vehicle; (2) concealing and failing to
10 disclose the Ford Fiesta's advertised price; (3) misrepresenting that it was legally allowed to sell
11 the Ford Fiesta for more than \$16,777; (4) selling the Ford Fiesta for more than \$16,777; (5)
12 violating the Single Document Rule; (6) and failing to properly itemize the down payment and
13 deferred down payment amounts in Plaintiff's contract for the Ford Fiesta.
14

15 85. Plaintiff is concurrently serving Rancho Ford with a CLRA notification and
16 demand letter via certified mail, return receipt requested. The notice letter sets forth the
17 relevant facts, notifies Rancho Ford of its CLRA violations, and requests that Rancho Ford
18 promptly remedy those violations.
19

20 86. Under the CLRA, a plaintiff may without prior notification file a complaint
21 alleging violations of the CLRA that seeks injunctive relief only. Then, if the defendant does
22 not remedy the CLRA violations within 30 days of notification, the plaintiff may amend her or
23 his CLRA causes of action without leave of court to add claims for damages. Plaintiff will
24 amend this complaint to add damages claims if Rancho Ford does not remedy its violations
25 within the statutory period.
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27 87. Under the CLRA, Plaintiff is entitled to a permanent injunction prohibiting
28 practices that violate the CLRA.

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2 88. Rancho Ford has an illegal pattern and practice of: (1) concealing and failing to
3 disclose that that the vehicles it sells have previously been registered as a rental vehicles; (2)
4 concealing and failing to disclose vehicle's advertised prices; (3) selling vehicles for more than
5 their advertised prices; (4) violating the Single Document Rule; and (5) and failing to properly
6 itemize the down payment and deferred down payment amounts in consumer automobile
7 purchase contracts.

8 89. Plaintiff is entitled to a permanent injunction that compels Rancho Ford to notify
9 all consumers who have been victims of the above-described illegal conduct, and enjoining
10 Rancho Ford from such further acts of illegal conduct.

11 90. Plaintiff is also entitled to recover her attorney's fees, costs, and expenses.

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13 EIGHTH CAUSE OF ACTION

14 Unfair Competition

15 (Against Defendants Rancho Ford and Does 1 Through 75)

16 91. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 90.

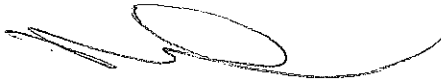
17 92. Rancho Ford' acts, omissions, misrepresentations, practices, and non-disclosures
18 constituted unlawful, unfair, and fraudulent business acts and practices within the meaning of
19 California Business & Professions Code sections 17200 *et seq.*

20
21 93. Rancho Ford has engaged in "unlawful" business acts and practices by failing to
22 disclose that the Ford Fiesta was previously registered as a rental vehicle, failing to itemize
23 Plaintiff's down payment and deferred down payment in the Ford Fiesta's purchase contract,
24 violating the Single Document Rule, selling the Ford Fiesta for more than its advertised price,
25 and breaching the implied warranty of merchantability. These acts and practices violated the
26 CLRA, the lemon law, Civil Code sections 2981.9 and 2982, Vehicle Code section 11713.1(e),
27 and 13 California Code of Regulations section 260.04(b).
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5. For permanent injunctive relief as requested above;
6. For prejudgment interest at the legal rate;
7. For attorney's fees, costs of suit, and out of pocket expenses; and
8. For such other and further relief as the Court deems just and proper under the circumstances.

VACHON LAW FIRM



Date: December 19, 2014

Michael R. Vachon, Esq.
Attorney for Plaintiff Cynthia Graham